THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13967 of 1999

05.12.2007

Between:

Konna Rami Naidu, S/o.Konna Lacchanna
and others

…Petitioners

And

The District Collector-cum-Land Acquisition Officer,
Srikakulam District

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13967 of 1999

ORDER:

The seven petitioners are residents of Ponduru Village and Mandal in Srikakulam District. Aggrieved by the notification dated 06.6.1999 under Section 4(1) of Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire their lands in survey Nos.219/11 to 18, 241/3, 241/6 etc., for public purpose, namely, providing house sites to Backward Class people as well as declaration dated 06.6.1999 under Section 6 of the Act, present writ petition is filed seeking a writ of Mandamus for invalidation of the same.

Petitioners raised three contentions in challenge to the impugned notification as well as declaration. First, enquiry under Section 5-A of the Act was dispensed with invoking the powers under Section 17(4) of the Act in a routine manner without application of mind. There is no urgency for acquiring house site for weaker sections and Backward Class people. Secondly, petitioners are small farmers and therefore their lands cannot be acquired. Lastly, alternate lands are available for provision of house sites and without exploring such possibility, acquisition proceedings were initiated and therefore the same is vitiated by legal mala fides.

The writ petition was filed way back on 06.7.1999. Unfortunately counter affidavit is not filed. Therefore the matter was adjourned last week to enable learned Assistant Government Pleader for Land Acquisition to get instructions as to whether Award is passed or not.

Today learned Assistant Government Pleader submits that he is not aware whether Award is passed or not. Even otherwise as this Court directed *status quo* regarding possession, applying the principle

laid down by the Supreme Court in **Government of Tamil Nadu v Vasantha Bai**[1] and **L.N.Venkatesan v State of Tamil Nadu**[2] and **M.Ramalinga Thevar v State of T.N.**[3], even if an Award is not passed in view of the *status quo* order, the acquisition proceedings shall not lapse.

Whether there is urgency for acquiring the land for provision of house sites to weaker sections, is no more *res integra*. This Court in **S.Yedukondalu v District Collector, West Godavari District**[4] considered this question, after referring to the binding precedents of Supreme Court, held as below.

> It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

Insofar as the plea of alternate land is concerned, it is a matter for the Government as the best Judge to identify the land which land is suitable for provision of house sites. In a given case even if the alternate land available is situated far away from the residential areas, the Government authority may not take such lands into consideration to acquire for provision of house sites. In such a case, mere availability of alternate lands cannot be a ground to invalidate the land acquisition proceedings. The plea of small farmers also fails as there is no prohibition under the Act for acquiring the land belonging to small farmers. The executive instructions if any in this regard do not confer any right and therefore this Court does not find any merit in the writ petition.

The writ petition is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

December 05, 2007
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[1] AIR 1995 SC 1778
[2] AIR 1997 SC 2426
[3] (2000) 4 SCC 322
[4] 2006(5) ALT 818